

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

IN RE:

PATRICK J. HOSTY

Case No. 20-31778
Chapter 13

**OBJECTION TO CHAPTER 13 PLAN CONFIRMATION BY SECURED CREDITOR
APPLE FEDERAL CREDIT UNION**

Apple Federal Credit Union, by and through undersigned counsel of record object to the confirmation of the Amended Chapter 13 plan for the following reasons:

- 1) On April 1, 2020 the Debtor filed for relief under Chapter 13 of the United States Bankruptcy Code.
- 2) On June 10, 2019, the Debtor obtained a purchase money loan from Apple Federal Credit Union secured by the Debtor's 2018 Jeep Renegade.
- 3) On June 10, 2020, Apple Federal Credit Union filed a proof of claim herein asserting that as of the date of the petition, it was owed \$34,217.50 at an interest rate of 7.14%.
- 4) The original proposed Chapter 13 plan provided for the pre-petition arrears to be paid through the plan and post-petition payments to be maintained by Apple Federal Credit Union. The pre-petition arrears as stated in the proof of claim were \$1,732.56.
- 5) The Debtor did not make post-petition payments to Apple Federal Credit Union.

- 6) On or about September 4, 2020, Apple Federal Credit Union filed a Motion for Relief from the Automatic Stay. The post-petition arrears as of the filing of the motion were \$3,457.50 including \$750.00 attorney's fees and \$181.00 in costs for filing the Motion for Relief from Stay.
- 7) On September 25, 2020, the Plan was confirmed.
- 8) On September 29, 2020, one day prior to the hearing on the Motion for Relief from Stay, the Debtor filed an Amended proposed plan providing for adequate protection to be paid by the Trustee in the amount of \$150.00 per month and providing for payment to Apple Federal Credit Union through the plan in the amount of \$39,411.00 at 4.25% interest in satisfaction of its claim.
- 9) The balance owed to Apple Federal Credit Union as of the filing of the Amended Plan on September 29, 2020 was \$40,688.42 including \$750.00 attorney's fees and \$181.00 costs incurred for the Motion for Relief from Stay.
- 10) The Debtor is unable to "cram-down" the vehicle as the debt was incurred within one year of the bankruptcy filing pursuant to Section 1325 and Section 506 of the United States Bankruptcy Code.
- 11) The Debtor is unable to "cram-down" the vehicle as the debt was incurred within the 910 day period preceding the date of the filing of the petition and the collateral for that debt consists of a motor vehicle. See 11 U.S.C. §1325.
- 12) In *Till v. SCS Credit Corp.*, the Supreme Court adopted a formulaic approach to determining the proper cram down interest rate in Chapter 13 cases. The formula ("prime plus") approach adopted in *Till* calculates the present value of deferred cash payments to a secured lender using a risk-free interest rate (i.e., the prime

rate), and adjusting that rate — by 100 to 300 basis points — to account for risk.
541 U.S. 465 (2004).

13) The prime rate of interest at the time the bankruptcy was filed was 4.37%. *See*,

<https://www.statista.com/statistics/290673/auto-loan-rates-usa/>

14) The Chapter 13 Till Interest Rate pursuant to the United States Bankruptcy Court

for the Middle District of North Carolina was 6.25% at the time the bankruptcy
was filed. *See* www.ncmb.uscourts.gov/till.

15) The rate used by the Middle District of North Carolina considers less than a two
point risk factor on the prime rate and is therefore an appropriate rate of interest.

The Debtor's proposed rate of prime minus .12% is an inappropriate rate of
interest.

WHEREFORE, Apple Federal Credit Union objects to the confirmation of the
Chapter 13 plan.

Respectfully submitted,

SILVERMAN THEOLOGOU, LLP

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CERTIFICATE OF SERVICE

I, Diana C. Theologou, Esq. of 11200 Rockville Pike, Suite 520, North Bethesda, MD 20852 certify that on the 8th of October 2020 the foregoing Objection to Confirmation was served by first class mail, postage prepaid, on:

Chapter 13 Trustee
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